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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,329	01/26/2001	Theresa M. Welbourne	4849-000001	6747

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EXAMINER	
DENNISON, JERRY B	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/771,329	WELBOURNE, THERESA M.	
	Examiner	Art Unit	
	J. Bret Dennison	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *7/11/2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. This Action is in response to the Amendment for Application Number 09/771,329 received on 11 July 2006.

2. Claims 1-33 are presented for examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The term "pulse" is not explicitly defined in the instant Specification. The Specification states the following:

"The system uses changes in "pulse" to predict organizational problems and recommend changes to organizational structure and personnel" [see Spec, page 4, paragraph 0007].

"A pulse measurement is defined herein as a metric that is used to track the overall vitality or energy level of the members of an organization. The pulse measures

three components of the work environment: the pace of work, efficiency of work, and job satisfaction" [see Spec, page 6, paragraph 00012].

There is no detail about how the pulse value is calculated based from these three components. There is no explicit definition of the term, just that it measures the three components mentioned above. Therefore, one of ordinary skill in the art would not be able to determine the meaning of the term pulse, how the pulse value is calculated, or how the three different components, having three different units, are used to derive any value whatsoever. If Applicant decides to traverse this rejection, Applicant is required to explicitly point out the portions of the Specification that accurately defines how pulse is calculated.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 includes the limitation, "the member's pulse". There is insufficient antecedent basis for this limitation in the claim.

6. Claim 1 includes the limitation, "the member's pulse answer". There is insufficient antecedent basis for this limitation in the claim.

7. Claim 1 includes the limitation, "the pulse answer". There is insufficient antecedent basis for this limitation in the claim.

8. Claim 2 includes the limitation, "the member's energy level answer". There is insufficient antecedent basis for this limitation in the claim.

9. Claim 3 includes the limitation, "the energy level answers". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 7 includes the limitation, "the member's energy level answer". There is insufficient antecedent basis for this limitation in the claim.

11. Claim 9 recites "wherein sending a report includes the step of categorizing energy level answer", which appears to have a grammatical error. If corrected to follow claim 3, and the change made to "energy level answers", this phrase would have insufficient antecedent basis, as does claim 3, since the preceding claims do not contain "energy level answers". If corrected to "the energy level answer", this phrase will still have insufficient antecedent basis, as the preceding claims do not contain an "energy level answer".

as shown below.

Response to Declaration Under 37 CFR 1.131

12. The Declaration under 37 CFR 1.131, filed on 11 July 2006 is insufficient to overcome the rejection of claims 1-33 over D'Alessandro in view of Altemuehle under 35 U.S.C. 103(a) as set forth in the previous final Office Action mailed 12 January 2006 because it is not properly executed.

13. In order to expedite prosecution, the Examiner will note the most substantive deficiencies in the proposed showing under 37 CFR 1.131. The Examiner notes that

these comments are not meant to be comprehensive in any way. The Applicant has the burden of providing a proper showing of prior invention.

14. The Applicant has failed to specifically show how the exhibits filed support the claimed invention. The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.").

15. Applicant has not provided actual dates of acts relied on to establish diligence. When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. See MPEP §715.07(a) regarding the diligence requirement.

The affidavit or declaration must state FACTS and produce such documentary evidence

and exhibits in support thereof as are available to show conception and completion of invention in this country or in a NAFTA or WTO member country (MPEP § 715.07(c)), at least the conception being at a date prior to the effective date of the reference. Where there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR 1.131).

As discussed above, 37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

(A) actual reduction to practice of the invention prior to the effective date of the reference; or

(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Alessandro in view of Altemuehle et al. (U.S. 2002/0120494).

16. Regarding claim 1, D'Alessandro disclosed a method of predicting and influencing the performance of an organization consisting of the steps of:

initiating a survey with an independent third party (D'Alessandro, col. 5, lines 44-53, D'Alessandro teaches initiating a survey to workers);

sending a first correspondence from the independent third party to a member of the organization (D'Alessandro, col. 5, line 50 through col. 6, line 30, D'Alessandro teaches initiating a survey to workers);

providing an independent third party web site (D'Alessandro, col. 5, lines 44-55); asking the member of the organization one question related to the member at the web site (D'Alessandro, col. 5, line 40 through col. 6, line 30, D'Alessandro teaches an administrator of the system giving a survey, asking questions related to the employee, for example, performance);

accessing the independent third party's web site by the member of the organization and responding thereto (D'Alessandro, col. 5, line 50 through col. 6, line 30);

sending the member's comments and responses to a database (D'Alessandro, col. 5, line 60-67, D'Alessandro teaches a database collecting survey results); and

analyzing the comments by the independent third party (D'Alessandro, col. 9, line 5-65, D'Alessandro teaches analyzing the survey data).

D'Alessandro did not explicitly state wherein the survey question is related to the member's pulse or energy level.

In an analogous art, Altemuehle disclosed a method and system for gathering employee feedback wherein employees are provided with a survey containing categories such as job satisfaction, the system providing a standardized rating system (Altemuehle, paragraph 0005, 0009).

D'Alessandro and Altemuehle both provide surveys for evaluating business performance through questions related to the employee (D'Alessandro, col. 5, lines 44-55; Altemuehle, paragraph 0005, 0009). The teachings of Altemuehle benefit D'Alessandro by providing confidential information regarding the level of satisfaction the employee feels toward the employer (Altemuehle, paragraph 0008).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the types of questions asked in the survey of Altemuehle, into the survey of D'Alessandro on order to determine what aspects of the business should be improved (Altemuehle, paragraph 0005).

17. Regarding claim 2, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of the independent

third party providing advice to the organization on how to respond to the member's pulse answer (D'Alessandro, col. 9, lines 54-60).

18. Regarding claim 3, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including preparing a report from the pulse answers (D'Alessandro, col. 9, lines 35-40);

sending the report to the web site (D'Alessandro, col. 9, lines 40-50, D'Alessandro teaches the report is constructed in a database, located at the website server;

notifying the organization that a report is available (D'Alessandro, col. 9, lines 30-35, D'Alessandro teaches that the system notifies management of the report);

retrieving the report by the organization at the independent third party's web site (D'Alessandro, col. 9, lines 40-50); and

sending a second correspondence from the independent third party to the member of the organization (D'Alessandro, col. 9, lines 40-50).

19. Regarding claim 4, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of calculating changes in a member's pulse (D'Alessandro, col. 5, lines 44-46, D'Alessandro teaches obtaining information from individual employees regarding their perception of performance criteria existing in the workplace, lines 60-67,

D'Alessandro also teaches comparing with prior survey data, therefore changes in pulse are calculated for each member).

20. Regarding claim 5, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of

21. determining whether a significant change has occurred to the pulse of the organization (D'Alessandro, col. 5, lines60-67, D'Alessandro teaches comparing with prior survey data, col. 9, lines 5-30, D'Alessandro also teaches weighted scores).

22. Regarding claim 6, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of determining whether a significant change has occurred in the pulse of the member (col. 9, lines 5-20, D'Alessandro teaches a weighted score component so that data can be accurately tallied with sophisticated analysis and report generation).

23. Regarding claim 7, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of providing a set of best possible responses to the member's pulse answer (D'Alessandro, col. 9, lines 54-60).

24. Regarding claim 8, D'Alessandro teaches the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of editing responses to remove a member's identity (D'Alessandro, col. 4, lines 20-30, D'Alessandro teaches that employees are provided with the opportunity to submit candid answers to potentially sensitive questions, inherently meaning that their identity is removed).

25. Regarding claim 9, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3, including wherein sending a report includes the step of categorizing pulse answers (D'Alessandro, col. 9, lines 39-55).

26. Regarding claim 10, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 9, including wherein categorizing comments includes using an expert system (D'Alessandro, col. 9, lines 39-55).

27. Regarding claim 11, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 3. D'Alessandro does not explicitly state the second party providing a response to the member of the organization by forwarding it through the independent third party. However, it would have been obvious to one in the ordinary skill in the art at the time of the invention for the second party to provide a response to the member of the organization through their account with the third party (D'Alessandro, col. 6, lines 25-67) because providing a response is the same behavior as providing a survey through the third party.

28. Regarding claim 12, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of the independent third party contacting the member of the organization to let them know a response has been provided (D'Alessandro, col. 9, lines 50-60).

29. Regarding claim 13, D'Alessandro and Altemuehle disclosed the limitations, substantially as claimed, as described in claim 1, including the step of providing a computer system having a member interface, an organization interface, and an independent third party interface (D'Alessandro, col. 6, lines 25-67, D'Alessandro, col. 6, lines 25-67 teaches a member interface, col. 9, lines 50-60, D'Alessandro teaches an organization interface by providing the results, col. 3, lines 60-67, D'Alessandro teaches a third party interface wherein the survey administrator can analyze survey results).

30. Claims 14-33 contain a method and system with the same limitations as those of claims 1-13. Therefore claims 14-33 are rejected by the same art used in claims 1-13.

Response to Amendment

Applicant's arguments filed 11 July 2006 have been fully considered but they are not deemed fully persuasive.

Applicant has not provided any arguments regarding the above rejection of D'Alessandro in view of Altemuehle, other than the Declaration under 37 C.F.R. 1.131, which is insufficient to overcome the rejection of claims 1-33 over D'Alessandro in view

of Altemuehle under 35 U.S.C. 103(a) as set forth in the previous final Office Action mailed 12 January 2006 because it is not properly executed (as shown in the above rejection).

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure

relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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